

ORIGINAL

OPEN MEETING



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MEMORANDUM

Arizona Corporation Commission

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TO: THE COMMISSION

DOCKETED

2010 DEC 10 P 12:31

FROM: Utilities Division

DEC 10 2010

DATE: December 10, 2010

DOCKETED BY

[Signature]

AZ CORP COMMISSION
DOCKET CONTROL

RE: OAK CREEK UTILITY CORPORATION - REQUEST FOR THE APPOINTMENT OF AN INTERIM MANAGER (DOCKET NOS. WS-02061A-04-0835 AND WS-02061A-04-0836)

On April 23, 2010, Dixie Potter, President of Oak Creek Utility Corporation ("Oak Creek" or "Company") docketed a letter entitled "No Longer Owner/Manager of Oak Creek Utility Corporation ("OCUC") located in Oak Creek Canyon, Sedona, Arizona." In the one-page letter, Ms. Potter wrote to inform the Arizona Corporation Commission ("Commission") that she would "not be owner or manager of Oak Creek Utility Corporation" and was moving to Texas for treatment of a serious illness. Ms. Potter also stated that OCUC has tried to advertise the business for sale, but under the current real estate crisis, have not been successful." Because of the abandonment by Ms. Potter of the Company, Staff requests that the Commission issue an order appointing an Interim Manager.

I. Background

Oak Creek currently provides water and sewer service to a small mobile home park near Oak Creek, Arizona. The Company serves approximately 35 customers. The original Certificate of Convenience & Necessity ("CC&N") to provide water and wastewater service was granted to R&S Utilities pursuant to Decision No. 39712. The Commission in Decision No. 54538 approved a transfer of the CC&N and sale of assets from R&S Utilities to Oak Creek Utility which was owned by Scott and Alison Gray ("the Grays"). The Grays sold the stock of Oak Creek to Dean Orem in 2003. Ms. Potter purchased the stock of Oak Creek in October 2006. Oak Creek's current rates and charges were established by Decision No. 67986 (July 18, 2005).

After Mr. Orem purchased Oak Creek, the Company filed an application for a rate increase and financing. New rates were adopted and a \$40,000 Water Infrastructure Financing Authority ("WIFA") loan was approved in Decision No. 67986. The purpose of the WIFA loan was to purchase and install a tank necessary for compliance with the Arizona Department of Environmental Quality ("ADEQ") requirement to maintain a one-day minimum of storage capacity. In the case of Oak Creek, the installation of a 10,000 gallon tank would meet the storage requirement. The Commission ordered Oak Creek to install the storage tank within 18 months of the decision and to docket the ADEQ Approval of Construction ("AOC").

After the purchase of the Company by Ms. Potter, there was some confusion about the ownership of the land upon which Ms. Potter intended to place the new tank and took several months to resolve because the Gray's had retained ownership of this land. With ADEQ's and WIFA's assistance, a tank site was chosen that was not part of the Grays' property.

Oak Creek has requested and received four extensions to comply with the installation of the storage tank and the docketing of the AOC. The last extension was granted by Decision No. 71315, which allowed the Company until April 30, 2010 to comply. The Company's delay in complying was exacerbated by Ms. Potter's health problems.

On January 4, 2010, Ms. Potter filed in the docket, a letter to Mr. Scott W. Gray, P.C. entitled "Transfer of Triple Net Land Lease and Return of Oak Creek Utility Corporation (OCUC) with all Shares and Rights to Original Land Utility Owner, Scott Gray". In her letter to Mr. Gray, Ms. Potter stated that, due to a very serious illness, she and her partner, Ms. Carla Hastings are "turning Oak Creek Utility Corporation with all assets and shares back to the actual owner of the utility which is you". She further stated that Oak Creek could not "afford the construction of this project (storage tank) as well as any legal counsel". Mr. Gray responded with a letter docketed January 20, 2010, stating that he had disposed of his interest in the Company and was unable to be involved with the Company.

Upon Ms. Potter's departure, no other corporate officer or agent was placed in charge of the everyday management of Oak Creek. Staff therefore contacted the remaining principals – Ms. Carla Hastings, Vice President; and Ms. Nicole R. Clayton, Statutory Agent, to determine which party would step in to provide management of the Company. Both Ms. Hastings and Ms. Clayton stated that they were not actively involved in managing the Company.

The Company had retained First National Management to handle basic office functions such as customer billing, cash management and utility payables. S.O.S. Management is the Company's certified water operator. However, neither of these entities has an ownership interest in the Company and cannot manage the Company. Additionally, neither of these entities has contact with any of the listed officers of the Company. The contracted management companies have been operating without the benefit of proper corporate guidance, full remuneration for services, or emergency ownership funds.

Discussions with First National Management, S.O.S. Management and Mr. Darryl Dayton, a ratepayer, have indicated that field and office issues have been developing that require the expertise, decision making and financial commitment of the owners. These issues include:

- a failed electrical panel that has required Oak Creek to depend on an adjacent landowner for the provision of electricity.
- a broken pump which is leaking sewage into the environment.
- lack of funds to do required testing.
- lack of funds to meet incoming utility obligations.
- no valve containment of a vent which, if properly addressed, would minimize or prevent the escape of methane gas which releases an unacceptable odor into the vicinity.

II. Recommendation

Given Ms. Potter's dominance of ownership responsibilities, her abandonment of this role and subsequent departure places great pressure on this small utility. Staff believes that without the appointment of an Interim Manager, the health, safety, and welfare of Oak Creek customers could be in jeopardy. Staff recommends that an Interim Manager be engaged immediately to address the necessary managerial and operational issues facing the Company.

Staff is currently investigating the need to file a formal complaint or an Order to Show Cause against the Company. Because of Ms. Potter's serious health condition, which contributed to the abandonment of the Company, Staff is recommending the immediate appointment of an Interim Manager.



Steven M. Olea
Director
Utilities Division

SMO:BKB:lm\RM

ORIGINATOR: Brian K. Bozzo

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 KRISTIN K. MAYES

3 Chairman

4 GARY PIERCE

5 Commissioner

6 PAUL NEWMAN

7 Commissioner

8 SANDRA D. KENNEDY

9 Commissioner

10 BOB STUMP

11 Commissioner

12 IN THE MATTER OF OAK CREEK
13 UTILITY COMPANY; STAFF REQUEST
14 FOR THE APPOINTMENT OF AN
15 INTERIM MANAGER

DOCKET NOS. WS-02061A-04-0835

WS-02061A-04-0836

DECISION NO. _____

ORDER

16 Open Meeting
17 December 14 and 15, 2010
18 Phoenix, Arizona

19 BY THE COMMISSION:

20 FINDINGS OF FACT

21 1. Oak Creek Utility Company ("Oak Creek" or "Company") is certificated to provide
22 water and sewer service as a public service corporation in the State of Arizona.

23 BACKGROUND

24 2. On April 23, 2010, Dixie Potter, President of Oak Creek Utility Company ("Oak
25 Creek" or "Company") docketed a letter entitled "No Longer Owner/Manager of Oak Creek
26 Utility Corporation ("OCUC") located in Oak Creek Canyon, Sedona, Arizona." In the one-page
27 letter, Ms. Potter wrote to inform the Arizona Corporation Commission ("Commission") that she
28 would "not be owner or manager of Oak Creek Utility Corporation" and was moving to Texas for
 treatment of a serious illness. Ms. Potter also stated that "OCUC has tried to advertise the business
 for sale, but under the current real estate crisis, have not been successful."

...

1 3. Oak Creek currently provides water and sewer service to a small mobile home park
2 near Oak Creek, Arizona. The Company serves approximately 35 customers. The original
3 Certificate of Convenience & Necessity ("CC&N") to provide water and wastewater service was
4 granted to R&S Utilities pursuant to Decision No. 39712. The Commission in Decision No. 54538
5 approved a transfer of the CC&N and sale of assets from R&S Utilities to Oak Creek Utility which
6 was owned by Scott and Alison Gray ("the Grays"). The Gray's sold the stock of Oak Creek to
7 Dean Orem in 2003. Ms. Potter purchased the stock of Oak Creek in October 2006. Oak Creek's
8 current rates and charges were established by Decision No. 67986 (July 18, 2005).

9 4. After Mr. Orem purchased Oak Creek, the Company filed an application for a rate
10 increase and financing. New rates were adopted and a \$40,000 Water Infrastructure Financing
11 Authority ("WIFA") loan was approved in Decision No. 67986. The purpose of the WIFA loan
12 was to purchase and install a tank necessary for compliance with the Arizona Department of
13 Environmental Quality ("ADEQ") requirement to maintain a one-day minimum of storage
14 capacity. In the case of Oak Creek, the installation of a 10,000 gallon tank would meet the storage
15 requirement. The Commission ordered Oak Creek to install the storage tank within 18 months of
16 the decision and to docket the ADEQ Approval of Construction ("AOC").

17 5. After the purchase of the Company by Ms. Potter, there was some confusion about
18 the ownership of the land upon which Ms. Potter intended to place the new tank and took several
19 months to resolve because the Gray's had retained ownership of this land. With ADEQ's and
20 WIFA's assistance, a tank site was chosen that was not part of the Grays' property.

21 6. Oak Creek has requested and received four extensions to comply with the
22 installation of the storage tank and the docketing of the AOC. The last extension was granted by
23 Decision No. 71315, which allowed the Company until April 30, 2010 to comply. The Company's
24 delay in complying was exacerbated by Ms. Potter's health problems.

25 7. On January 4, 2010, Ms. Potter filed in the docket, a letter to Mr. Scott W. Gray,
26 P.C. entitled "Transfer of Triple Net Land Lease and Return of Oak Creek Utility Corporation
27 (OCUC) with all Shares and Rights to Original Land Utility Owner, Scott Gray". In her letter to
28 Mr. Gray, Ms. Potter stated that, due to a very serious illness, she and her partner, Ms. Carla

1 Hastings are "turning Oak Creek Utility Corporation with all assets and shares back to the actual
2 owner of the utility which is you". She further stated that Oak Creek could not "afford the
3 construction of this project (storage tank) as well as any legal counsel". Mr. Gray responded with
4 a letter docketed January 20, 2010, stating that he had disposed of his interest in the Company and
5 was unable to be involved with the Company.

6 8. Upon Ms. Potter's departure, no other corporate officer or agent was placed in
7 charge of the everyday management of Oak Creek. Staff therefore contacted the remaining
8 principals – Ms. Carla Hastings, Vice President; and Ms. Nicole R. Clayton, Statutory Agent, to
9 determine which party would step in to provide management of the Company. Both Ms. Hastings
10 and Ms. Clayton stated that they were not actively involved in managing the Company.

11 9. The Company had retained First National Management to handle basic office
12 functions such as customer billing, cash management and utility payables. S.O.S. Management is
13 the Company's certified water operator. However neither of these entities has an ownership
14 interest in the Company and cannot manage the Company. Additionally, neither of these entities
15 has contact with any of the listed officers of the Company. The contracted management
16 companies have been operating without the benefit of proper corporate guidance, full remuneration
17 for services, or emergency ownership funds.

18 10. Discussions with First National Management, S.O.S. Management and Mr. Darryl
19 Dayton, a rate payer, have indicated that field and office issues have been developing that require
20 the expertise, decision making and financial commitment of the owners. These issues include:

- 21 • a failed electrical panel that has required Oak Creek to depend on an adjacent
22 landowner for the provision of electricity.
- 23 • a broken pump which is leaking sewage into the environment.
- 24 • lack of funds to do required testing.
- 25 • lack of funds to meet incoming utility obligations.
- 26 • no valve containment of a vent which, if properly addressed, would minimize or
27 prevent the escape of methane gas which releases an unacceptable odor into the
28 vicinity.

11. Staff is currently investigating the need to file a formal complaint or an Order to Show Cause against the Company. Because of Ms. Potter's serious health condition, which contributed to the abandonment of the Company, Staff is recommending the immediate appointment of an Interim Manager.

12. Given Ms. Potter's dominance of ownership responsibilities, her abandonment of this role and subsequent departure places great pressure on this small utility. Staff believes that without the appointment of an Interim Manager, the health, safety, and welfare of Oak Creek customers could be in jeopardy. Staff recommends that an Interim Manager be engaged immediately to address the necessary managerial and operational issues facing the Company.

CONCLUSIONS OF LAW

1. Oak Creek Utility Company is an Arizona public service corporation within the meaning of Article XV, Section 2, of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

3. The Commission, having reviewed Staff's Memorandum dated December 10, 2010, concludes that it is in the public interest for Staff to immediately commence efforts to obtain an agreement with an interim manager who shall assume operations of Oak Creek.

ORDER

IT IS THEREFORE ORDERED that Staff shall immediately commence efforts to obtain an agreement with an interim manager who shall assume operation of Oak Creek Utility Corporation as soon as possible on an interim basis pending further order of the Commission in this docket.

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1 IT IS FURTHER ORDERED that Oak Creek Utility Corporation shall cooperate fully with
2 the interim manager and supply all necessary documents, records, and other information requested
3 by the interim operator.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5
6 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**
7
8

9 CHAIRMAN

COMMISSIONER

10
11
12 COMMISSIONER

COMMISSIONER

COMMISSIONER

13
14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto, set my hand and caused the official seal of
17 this Commission to be affixed at the Capitol, in the City of
18 Phoenix, this _____ day of _____, 2010.

19
20 _____
21 ERNEST G. JOHNSON
22 EXECUTIVE DIRECTOR

23 DISSENT: _____

24 DISSENT: _____

25 SMO:BKB:lh\RM
26
27
28

1 SERVICE LIST FOR: Oak Creek Utility Corporation
2 DOCKET NO. WS-02061A-04-0836

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4 President
5 Oak Creek Utility Corporation
6 771 Skipjack Drive
7 Henderson, Nevada 89015

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